

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2011

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
59	20 June 2011	Crystal Lake Camp	<b>Reason:</b> 90(3)(h) 91(7) Legal advice	Report, Attachments, Minutes		Orders that the report, attachments and all minutes be retained in confidence until settlement of the matter and that this order be reviewed every 12 months.	3 Sep 12		Released 3 Sept 2012



## **RECOMMENDATIONS FROM ADVISORY COMMITTEES**

NIL

## **QUESTIONS ARISING FROM COUNCIL MEETING**

Ms Diane Van Eck regarding:

1. Item 12.1 – MDPA Structure Plan.  
Mr Andrew Stuart, Chief Executive Officer, provided a response at the meeting.
2. Dumping in land adjacent Laratinga Wetlands.  
Mr Greg Parker, General Manager Council Services, took the question on notice.

## **105      CONFIDENTIAL REPORTS**

**105.1      REPORT TITLE:      CONFIDENTIAL ITEM: CRYSTAL LAKE  
   CAMP SITE  
   DATE OF MEETING: 20 JUNE 2011  
   FILE NUMBER:      10/130/004-03**

Moved Councillor Westwood that Council:

1. Pursuant to Section 90(2) of the Local Government Act 1999 orders that all members of the public except the:

- Chief Executive Officer
- General Manager, Infrastructure & Projects
- General Manager, Corporate Services
- General Manager, Council Services
- Manager Assets & Contracts
- Administration Officer
- Minute Secretary

be excluded from attendance at the meeting for Agenda Item 16.1 Crystal Lake Camp Site.

The Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to legal advice, which will be discussed in detail by council members.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of this information may compromise the Council's position.

Seconded Councillor Gamble and CARRIED

Moved Councillor Gamble that Council:

2. reject the settlement sum proposed by Mr Carter (refer attachment 4);
3. authorise the Chief Executive Officer or nominee to undertake legal action in the Supreme Court for Mr Carter to give up possession of the land and require him to remove his buildings and improvements from the land;
4. in the event of Mr Carter challenging this action, authorise the CEO or nominee to take any necessary actions to progress this matter through the courts, which may include retaining legal counsel, swearing affidavits, attending hearings and other appropriate court processes.
5. authorise the Chief Executive Officer or nominee to negotiate settlement terms that may arise during the court process for final determination by Council;
6. authorise the Mayor and/or Chief Executive Officer to execute all necessary documentation relating to this matter;
7. note the advice received from Mellor Olsson (refer attachment 8) including the likely costs and timing of commencing legal action against Mr Carter;
8. note that a new operational budget item will be required in 2011/12 to cover anticipated expenditure to be incurred through this process and that partial cost recovery only may be possible;
9. resume debt collection against Mr Carter immediately for outstanding fees and charges owed to Council;
10. determine that it is not appropriate for the Mayor to accept the request to meet with Mr Carter at this time;
11. note that a further report to Council will be prepared once legal proceedings have begun
12. having considered Agenda Item 16.1 Crystal Lake Camp Site, in confidence under 90(2) and (3)(h) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the report, attachments and all minutes be retained in confidence until settlement of the matter and that this order be reviewed every 12 months.

Seconded Councillor Hamilton and CARRIED

---

MEETING DECLARED CLOSED AT 8.35PM

---

MAYOR

---

DATE

**16. CONFIDENTIAL REPORTS**

**16.1. REPORT TITLE: CONFIDENTIAL ITEM: CRYSTAL LAKE  
CAMP SITE**

**DATE OF MEETING: 20 JUNE 2011**

**FILE NUMBER: 10/130/004-03**

**Strategic Plan Ref:**

Goal Area Number 4, Desired Outcome 4.7 Well Maintained and utilised community assets; Ongoing Initiative 4.17: Plan for and manage community assets in partnership with the community including the use of community buildings and sporting facilities.

**Purpose:**

For Council to consider the result of settlement negotiations with Mr Carter to give up vacant possession of the Crystal Lake Camp Site ("the Site") and determine the next steps to achieving this objective.

**Summary – Key Issues:**

1. After discussions with Mr Carter, Council made a formal written offer to Mr Carter of \$15,900 on 6 April 2011.
2. Mr Carter wrote a letter to Council on 5 May 2011 rejecting this offer.
3. Mr Carter continues to reside at Crystal Lake Camp outside any legal agreement.
4. Council has received updated legal advice relating to the commencement of proceedings in the Supreme Court for an order of vacant possession.

**Recommendation:**

That Council:

1. Pursuant to Section 90(2) of the Local Government Act 1999 orders that all members of the public except the:
  - Chief Executive Officer
  - General Manager, Infrastructure & Projects
  - General Manager, Corporate Services
  - General Manager, Council Services
  - Contracts Co-ordinator
  - Manager Assets & Contracts
  - Minute Secretary

be excluded from attendance at the meeting for Agenda Item 16.1 Crystal Lake Camp Site.

The Council is satisfied that pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this

Agenda item is information relating to legal advice, which will be discussed in detail by council members.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of this information may compromise the Council's position.

2. reject the settlement sum proposed by Mr Carter (refer attachment 4);
  3. authorise the Chief Executive Officer or nominee to undertake legal action in the Supreme Court for Mr Carter to give up possession of the land and require him to remove his buildings and improvements from the land;
  4. in the event of Mr Carter challenging this action, authorise the CEO or nominee to take any necessary actions to progress this matter through the courts, which may include retaining legal counsel, swearing affidavits, attending hearings and other appropriate court processes.
  5. authorise the Chief Executive Officer or nominee to negotiate settlement terms that may arise during the court process for final determination by Council;
  6. authorise the Mayor and/or Chief Executive Officer to execute all necessary documentation relating to this matter;
  7. note the advice received from Mellor Olsson (refer attachment 8) including the likely costs and timing of commencing legal action against Mr Carter;
  8. note that a new operational budget item will be required in 2011/12 to cover anticipated expenditure to be incurred through this process and that partial cost recovery only may be possible;
  9. resume debt collection against Mr Carter immediately for outstanding fees and charges owed to Council;
  10. determine that it is not appropriate for the Mayor to accept the request to meet with Mr Carter at this time;
  11. note that a further report to Council will be prepared once legal proceedings have begun;
  12. having considered Agenda Item 16.1 Crystal Lake Camp Site, in confidence under 90(2) and (3)(h) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the report, attachments and all minutes be retained in confidence until settlement of the matter and that this order be reviewed every 12 months.
-

**Background:**

1. The Crystal Lake Camp Site is situated on part of Lord Robinson Park, Macclesfield. The land is owned by the Crown and under the care and control of Council. The land is classified as community land and was dedicated for Parkland on 14 August 1980. An aerial photograph showing the boundaries of Lord Robinson Park, existing lease area and amended lease area is attached to this report (attachment 1).
2. The lease for the Site held by Mr RA Carter expired on 30 June 2007. The lease was for a period of ten (10) years commencing on 1 July 1997. At the end of the period Mr Carter occupied the Site as a monthly tenant until the notice to terminate became effective on 12 December 2010. This date was subsequently extended until 10 February 2011 to enable negotiations to take place between the parties. After this date Mr Carter has remained on the Site without any tenancy arrangement.
3. In reviewing the lease arrangements with Mr Carter, anomalies were identified with respect to the lease, such as clarity about the actual boundary of the leased area and the status and ownership of the buildings. Community members had also expressed concerns primarily about the community having restricted access to the watercourse running through the Site.
4. Council received legal opinion in February 2011 from Mellor Olsson on the various options available to Council in dealing with the continued occupation of the land by Mr Carter.
5. At its meeting on 7 March 2011, Council resolved in-confidence to:
  2. *Rejects the claim for settlement dated 24 January 2011 made by Camatta Lempens Pty Ltd Lawyers on behalf of Mr Carter.*
  3. *Authorises the Assets & Contracts Manager to make Mr Carter a formal written, without prejudice offer, valid for thirty (30) days from the date of the offer to give up possession of the Site within two (2) months of the date of the offer and to leave all of the buildings and improvements on Site and to pay to Council all monies outstanding for unpaid rates, rental and Council's legal expenses so far incurred on this matter.*
  4. *Should the formal offer in recommendation 3 not be formally accepted by Mr Carter within thirty (30) days of the date of the offer, that Council authorises the Assets & Contracts Manager to negotiate terms of settlement with Mr Carter for him to give up possession of the Site and for the Assets & Contracts Manager to report the outcomes of the negotiations for consideration by Council not later than six (6) weeks from the date of the offer in recommendation 3.*
  5. *Authorises the Assets & Contracts Manager to extend the date for Mr Carter to give up possession of the Site from 13 December 2010*

*to thirty (30) days from the date of the offer by the Assets & Contracts Manager and in the meantime legal action to evict Mr Carter from the Site be deferred.*

**Discussion:**

6. Subsequent to the Council meeting on 7 March 2011, Council notified Mr Carter in writing (refer attachment 2) of Council's intention to:
  - a. Negotiate a formal settlement offer for vacant possession
  - b. Extend the date to give up vacant possession of the site
7. Council deferred debt collection of outstanding monies owed by Mr Carter as well as legal action to evict Mr Carter whilst negotiations were being carried out.
8. Council's Manager Assets and Contracts then met with Mr Carter on Site on 24 March 2011 to inspect the facility, discuss the issues and progress negotiations. This on-site meeting was followed up with a phone conversation to clarify Mr Carter's intentions. No verbal agreement on settlement terms could be reached with Mr Carter and he was advised that Council would be making an in-principle without prejudice written offer which would be valid for thirty (30) days.
9. Council sent this offer (refer attachment 3) of \$15,900 (excl. GST) to Mr Carter on 6 April 2011 requesting vacant possession of the Site.
10. Mr Carter wrote a letter (refer attachment 4) to Council on 5 May 2011 (on the final day to respond) and rejected this offer. Mr Carter's expectations for a suitable settlement sum is in the order of \$250,000. The basis for this sum is outlined in his letter.
11. Mr Carter also sent an email (refer attachment 5) to Council on 5 May 2011 requesting a meeting with Mayor Ferguson which to date has not occurred.
12. Council responded to Mr Carter's email (refer attachment 6) on 16 May 2011 acknowledging his refusal of offer and advising him that the matter would be considered in confidence at a future Council meeting.
13. Mr Carter sent another email to Mayor Ferguson (refer attachment 7) on 27 May 2011 expressing his disappointment in not being able to meet with her and questioning why this matter is being kept confidential.
14. Council and Mr Carter have failed to reach a mutually acceptable outcome through extended negotiations and the timeframe for Mr Carter to accept Council's offer has expired.
15. To the best of Council's knowledge, Mr Carter and his family continue to reside at Crystal Lake Camp.
16. Council received updated legal opinion from Mellor Olsson on 7 June 2011 regarding the likely costs, timing and risks associated with the



process of evicting Mr Carter from the Site. This legal advice is attached to this report (refer attachment 8).

17. In summary, the legal opinion received indicates:

- a. Likely legal expenditure to be between \$20,000 and \$50,000 if Mr Carter contests the legal action and up to \$10,000 if the action is not contested;
- b. Likely timeframe for resolution is 6-12 months and at worst 18 months from start of proceedings;
- c. The risks are that the action is dismissed, albeit unlikely, and Council has to pay some of Mr Carter's legal costs and some amount towards the value of the buildings;
- d. Legal counsel could be retained at a later time.

18. Council could consider renegotiating with Mr Carter however he has indicated on numerous occasions that he is seeking a settlement sum in the vicinity of \$250,000 and given the history of this matter this is unlikely to be resolved to the satisfaction of Council.

**Community Engagement:**

Informing only	Not applicable to this report. Community consultation has taken place in the past on the future use options for the Site however the registration of interest process has been put on hold.
----------------	---

**Policy:**

No policy.

**Budget:**

Council has approved a budget of \$15,000 in its 2010/11 budget to settle this matter. As of 23 May 2011, expenditure to date was \$10,134.

Council will need to consider budgeting in the future for:

- additional legal expenses,
- potential removal and/or upgrading of buildings and remediation of the Site.
- potential ongoing maintenance and operation of the Site (e.g. slashing, mowing, security, etc.) until future use is determined and implemented.

The full extent of such expenditure is not known at present and will require specific expertise to determine.

**Statutory/Legal:**

Council has received previous legal advice on the required process to bring this matter to settlement and has now sought further legal opinion from Mellor Olsson (refer attachment 8). It is imperative that Council continue to

seek sound legal opinion on this matter so that informed decision making can occur.

Proposed legal action by Mellor Olsson refers to Section 192 of the Real Property Act 1886.

**Staff Resource Requirements:**

This legal matter will be co-ordinated by existing staff with assistance from Council's lawyers. The time spent on this matter by staff is significant however these costs are not being accumulated.

If vacant possession is granted, Council will resume management of the Site and undertake routine maintenance until the future use is determined.

**Environmental:**

Council understands that Mr Carter is continuing to perform basic maintenance on the Site. Future management of the Site will need to consider environmental issues.

**Social:**

The prolonged process of eviction of Mr Carter from Crystal Lake Camp may have a detrimental affect on the community over the short term. Council understands that a number of the clubs and schools have made use of the Site and if legal action is pursued, Mr Carter may cease his support of such activities.

The proposed process may create a division in the community depending on the level of support for Mr Carter.

**Risk Assessment:**

An assessment of risk has been undertaken in accordance with Council's infrastructure risk management plan (09/58080) to help Council identify the high level risks of proceeding with this recommendation:

Category	Description	Likelihood	Consequence	Risk Rating
Financial	Council could be exposed to significant legal expenses.	Almost Certain	Minor	High
Financial	Council could be responsible for significant costs (\$100k+) for the removal of buildings, remediation or upgrading of the Site.	Almost Certain	Moderate	High
Financial	Mr Carter could choose to go to the Ombudsman if the settlement is not to his liking therefore creating additional work for staff.	Likely	Minor	Medium
Social	The community may not be able to access the site for some time if the court proceedings are prolonged.	Likely	Insignificant	Medium
Environmental	Contamination of land and waterways if maintenance is ceased.	Unlikely	Minor	Low

**Asset Management:**

Until the matter of whether or not some or all of the buildings and improvements remain on the land, any tender process for the future use and management of this Site should not be undertaken. It is unlikely that Mr Carter will opt to remove any of the buildings from the Site.

The buildings are provisionally valued at \$148,000 (Maloney Field Services 2010). Removal and remediation of all of the buildings is estimated to be \$104,840 and this does not take into account any latent conditions such as site contamination (except for asbestos in the majority of the buildings). Without knowing the full extent of the costs of latent conditions, a firm figure for site remediation cannot be determined.

**Conclusion:**

Mr Carter has rejected Council's settlement offer of \$15,900 (excl. GST) for vacant possession of the Crystal Lake Camp site. Mr Carter is instead seeking a settlement sum in excess of \$250,000.

All reasonable avenues for negotiation have been exhausted and the parties have not been able to get anywhere near reaching mutual agreement on a suitable settlement sum in the timeframes resolved by Council.

---

**Key Contact**

Phillip Burton, Manager Assets and Contracts, Infrastructure and Projects

**Manager or Sponsor of Project**

Brian Clancey, General Manager, Infrastructure & Projects

**Attachments**

1. Site plan showing existing lease area, proposed lease area and boundary of Lord Robinson Park
2. Copy of letter to Mr Carter dated 9 March 2011 to start negotiations
3. Copy of letter of offer from Council to Mr Carter dated 6 April 2011
4. Copy of letter from Mr Carter to Council in response to offer dated 5 May 2011
5. Copy of email to Mayor Ferguson from Mr Carter dated 5 May 2011
6. Copy of letter from Council to Mr Carter acknowledging his response dated 16 May
7. Copy of email to Mayor Ferguson from Mr Carter dated 27 May 2011
8. Updated legal advice from Mellor Olsson Lawyers (acting for Council) dated 9 June 2011

**Previously Supplied Attachments (not attached to this report but available on request)**

1. Chronological summary of events relating to the Crystal Lake Camp Site
2. List and photographs of buildings on site
3. Legal advice from Mellor Olsson Lawyers (acting for Council) dated 16 February 2011



## Attachment 1 to Item 16.1



The amended lease area follows the boundary fences on the western, southern and south east boundaries of the Camp Site and then includes the lake and the western half of the watercourse northwards from the lake. The eastern half of the watercourse is not included in the amended lease area and will be directly accessible from the eastern side of Lord Robinson Park. Also removed from the lease area on the eastern side are walking trails and areas that have been the subject of environmental rehabilitation efforts by the Macclesfield Bushfire Group.



## THE DISTRICT COUNCIL OF MOUNT BARKER

P.O. BOX 54, Mount Barker S.A., 5251  
DX address: DX 51706, Mount Barker

Telephone: (08) 8391 7200  
web site: [www.dcmtbarker.sa.gov.au](http://www.dcmtbarker.sa.gov.au)

Facsimile: (08) 8391 7299  
ABN: 54 250 395 713

Reference: 10/130/004-03

9 March 2011

Mr R Carter  
C/- Crystal Lake Camp  
Devereaux Street  
MACCLESFIELD SA 5153

Dear Mr Carter

**Re: Crystal Lake Camp Site Settlement - Without Prejudice**

At its meeting on 7 March 2011, Council resolved in confidence to reject the claim received for settlement dated 24 January 2011 made by Camatta Lempens Pty Ltd Lawyers on your behalf.

In rejecting this claim Council has authorised me to:

- a. negotiate a formal offer, without prejudice, for you to give up vacant possession of Crystal Lake ("the site")
- b. extend the date for you to give up vacant possession of the site

I bring to your attention that I am not authorised to accept any offer. Any offer agreed in principle between us will need to be ratified by Council in confidence at a future Council meeting.

Please contact me as soon as possible to arrange a convenient time to meet to discuss this.

Yours sincerely

Phillip Burton  
**MANAGER,  
ASSETS & CONTRACTS  
INFRASTRUCTURE & PROJECTS**

Direct Line: 8391 7270  
email: [pburton@dcmtbarker.sa.gov.au](mailto:pburton@dcmtbarker.sa.gov.au)

cc: Franco Camatta of Camatta Lempens Pty Ltd Lawyers





## THE DISTRICT COUNCIL OF MOUNT BARKER

P.O. BOX 54, Mount Barker S.A., 5251 – Telephone: 8391-7200  
DX address: DX 51708, Mount Barker

Facsimile: (08) 8391-7299  
web site: [www.dcmtbarker.sa.gov.au](http://www.dcmtbarker.sa.gov.au)

10/130/004-03

Reference:

6 April 2011

Mr R Carter  
C/- Crystal Lake Camp  
Devereux Street  
MACCLESFIELD SA 5153

### WITHOUT PREJUDICE

**Re: Crystal Lake Camp Site - Settlement Offer**

Dear Mr Carter

As previously advised by letter on 9 March 2011, Council has resolved in confidence to reject your claim for settlement dated 24 January 2011.

In rejecting this claim Council has authorised me to negotiate a formal offer, without prejudice, for you to give up vacant possession of Crystal Lake ("the site"). To date, through our informal discussions, both on-site and over the phone, we have not been able to reach a mutual agreement on the settlement sum.

I understand that you own all the buildings, plant and equipment on the site. I also understand that it is your preference to give up vacant possession of the site leaving all the buildings and improvements on site behind. I note that you will take with you your personal effects, furniture and fittings from the caretaker's residence.

For your information, Council is not clear on the future use of this site and this will be subject to further deliberation.

In determining an appropriate settlement sum, I have taken into consideration the following factors:

1. The independent valuation undertaken by Maloney Field Services in March 2010 of buildings and other site improvements which concluded that their depreciated replacement cost was approximately \$143,800;
2. The nature and age of construction and the suspected asbestos presence within building materials, an estimated building demolition and remediation cost of \$104,840 from the Maloney Field Services valuation in March 2010;
3. Recent improvements to the site since the valuation, including, I understand, the installation of a new water pump, worth approximately \$3,000;
4. Plant and equipment excluded from the valuation such as bedding, portable heating/cooling, tables, chairs, kitchen appliances, sporting items, etc. with a total value of approximately \$2,500;
5. Outstanding monies owed to Council including rates, lease fees and charges and legal expenses totalling approximately \$28,567.

It is my opinion that the depreciated replacement cost plus recent improvements and plant and equipment less the demolition and remediation costs and the monies owed to Council would represent an appropriate settlement sum.

It is on this basis therefore, that I offer you a without prejudice settlement sum of \$15,900 (exclusive of GST) for you to give up vacant possession of the site within two (2) months of the date of this offer leaving all the buildings (including plant and equipment) and improvements to site behind hence transferring ownership to Council on the day on which vacant possession is provided.

I bring to your attention that I am not authorised to approve any acceptance by you of this offer. Any offer agreed in principle between us will need to be considered and, if deemed appropriate, ratified by Council in confidence at a future Council meeting.

I remind you that you have thirty (30) days to respond in writing to this settlement offer. Failure to do so will be considered a non-acceptance and the outcome will be referred to Council at the next available meeting for their consideration.

I await your written response.

Yours sincerely



Phillip Burton  
**MANAGER,**  
**ASSETS & CONTRACTS**  
**INFRASTRUCTURE & PROJECTS**

Direct Line: 8391 7270

email: [pburton@dcmtbarker.sa.gov.au](mailto:pburton@dcmtbarker.sa.gov.au)

cc: Franco Camatta of Camatta Lempens Pty Ltd Lawyers

**SCANNED**  
6/5/11

DC Mt Barker  
File No. 10/130/004-5  
6 MAY 2011  
Doc. No.

Attachment 4 to Item 16.1

**Mr Phil Burton**  
**Manager & Contracts Infrastructure & Projects**

**5 May 2011**

Dear Phil

Many thanks for your prompt response. I am naturally extremely disappointed with your offer for compensation for my property, my home, my business and for my significant losses incurred due to District Council of Mt Barker's five year deliberation of my lease.

Your offer of \$15,900 is based on the Maloney Field Services valuation of the improvements on the property.

Both I and my legal representative have requested a copy of this valuation?

Could you please forward a copy of this valuation, including details of inclusions and exclusions, as this is the basis for your offer. I have been formally advised by Mt Barker Council of 3 different amounts regarding the Maloney Field Services valuation of Improvements to my property ranging from \$40,000 to \$148,000?

The improvements have been valued and are presently insured for \$451,000.

With regard to your "Without Prejudice" offer of \$15,900, I again wish to bring to your attention and to the attention of all Mt Barker Councillors:

1. Council's valuation of \$40,000 /\$143,800/\$148,000? Is a gross undervaluation as the improvements have been valued and are presently insured for \$451,000.
2. The issue of removal of buildings is not mentioned in my lease and is clearly not my responsibility. As per my lease "I may remove any fixtures, fittings and partitions brought upon the land". There is absolutely no mention whatsoever of removal of any buildings brought upon the land by others at the end of my lease.
3. The real value of "Bedding, portable heating/cooling, tables, chairs, kitchen appliances, sporting items, etc?" is realistically \$50,000 not \$2,500 as suggested.



4. "Monies owed to Council" for "rates and lease fees" since July 2009, when Council voted to appoint me as the caretaker, are clearly not my responsibility. Since July 2009, while awaiting my appointment, I have maintained the property at my significant expense, saving Council hundreds of thousands of dollars.

5. You have requested that I pay "Council's legal expenses" of \$8,000+? Why?

I therefore present the following "Without Prejudice" proposal to expedite this prolonged issue;

Council pay the true valuation of the improvements	\$451,000
Less the cost of "Removal of the buildings"	\$0
Less the "Outstanding monies owed to Council"	\$0
Plus my lost income due to Council's 5 year deliberation	\$200,000+
Plus "Crystal Lake Camp" name, phone no, Domain name etc	\$100,000
Plus compensation for the loss of my home & my livelihood	\$250,000

On the basis of the above facts and figures I suggest that Council reconsider their offer as I am most confident that an independent arbitrator would support the above claims.

In an attempt to expedite this prolonged issue I will consider a settlement sum of \$250,000+. I look forward to your "fair and reasonable" response?

Many thanks Phil

Regards



Robert Carter

"Caretaker", Crystal Lake Camp, Macclesfield, SA 5153

**E-mail Message****Attachment 5 to Item 16.1**

---

**From:** [Ann Ferguson \[EX:/O=FIRST ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=A Ferguson\]](#)  
**To:** [Sue Miller \[EX:/O=FIRST ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=Smiller\]](#)  
**Cc:**  
**Sent:** 6/05/2011 at 1:24 PM  
**Received:** 6/05/2011 at 1:24 PM  
**Subject:** FW: Emailing: Dear Phill Burton 5 May 2011

---

**Attachments:** Dear Phill Burton 5 May 2011.docx

---

-----Original Message-----

**From:** robert [mailto:crystallakecamp@tpg.com.au]  
**Sent:** Thursday, 5 May 2011 7:23 PM  
**To:** Ann Ferguson  
**Subject:** Emailing: Dear Phill Burton 5 May 2011

Dear Ann, after 5 years I am getting increasingly frustrated by Councils lack of consultation, lack of transparency and lack of understanding regarding the termination of my lease of Crystal Lake Camp. I therefore forward to you my response to Mr Phillip Burton and formally request a meeting with you to discuss this prolonged issue with the hope of a fair and reasonable resolution. I thank you for your consideration and your past interest in Crystal Lake Camp. The message is ready to be sent with the following file or link attachments:

Dear Phill Burton 5 May 2011

**Note:** To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

---

This email has been scanned by the MessageLabs Email Security System.  
For more information please visit <http://www.messagelabs.com/email>

---

Attachment 6 to Item 16.1



## THE DISTRICT COUNCIL OF MOUNT BARKER

P.O. BOX 54, Mount Barker S.A., 5251

DX address: DX 51708, Mount Barker

Reference: 10/130/004-03

Telephone: (08) 8391 7200

web site: [www.dcmtbarker.sa.gov.au](http://www.dcmtbarker.sa.gov.au)

Facsimile: (08) 8391 7299

ABN: 54 250 395 713

16 May 2011

Mr R Carter  
C/- Crystal Lake Camp  
Devereux Street  
MACCLESFIELD SA 5153

### WITHOUT PREJUDICE

Dear Mr Carter

**Re: Crystal Lake Camp Site - Settlement Offer**

I acknowledge and refer to the following correspondence forwarded by you to Council:

- Email to Mayor Ann Ferguson dated 5 May 2011
- Letter to myself dated 5 May 2011

I understand from your correspondence that you do not wish to accept our formal without prejudice settlement offer dated 6 April 2011.

I remind you that your refusal of our settlement offer and our failure therefore to reach mutual agreement on settlement terms will now be reported to Council at a future meeting for their consideration. This will include a copy of your letter of 5 May 2011.

I will advise you (when known) of the timing of the Council meeting at which this matter is to be further considered. This will include consideration of your request to meet with Mayor Ferguson.

I trust that you understand the intent of Council, however if you have any questions on this matter please contact me on the details shown below.

Yours sincerely

Phillip Burton  
**MANAGER, ASSETS & CONTRACTS**  
**INFRASTRUCTURE & PROJECTS**

Direct Line: 8391 7270

email: [pburton@dcmtbarker.sa.gov.au](mailto:pburton@dcmtbarker.sa.gov.au)

cc: Franco Camatta of Camatta Lempens Pty Ltd Lawyers

## Attachment 7 to Item 16.1

## E-mail Message

---

**From:** Sue Miller [EX:/O=FIRST ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=SMILLER]  
**To:** Brian Clancey [EX:/O=FIRST ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Bclancey], Phil Burton [EX:/O=FIRST ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Pburton], Sue Miller [EX:/O=FIRST ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Smiller]  
**Cc:**  
**Sent:** 30/05/2011 at 11:43 AM  
**Received:** 30/05/2011 at 11:43 AM  
**Subject:** FW: Emailing: Dear Phill Burton 5 May 2011

---

**Attachments:** Dear Phill Burton 5 May 2011.docx

---

FYI...

Sue Miller

Executive Assistant to CEO & Mayor

Tel: 08 8391 7264

Email: smiller@dcmtbarker.sa.gov.au

-----Original Message-----

From: robert [mailto:crystallakecamp@tpg.com.au]  
Sent: Friday, 27 May 2011 7:22 PM  
To: Ann Ferguson  
Subject: FW: Emailing: Dear Phill Burton 5 May 2011

Dear Ann, I am sincerely disappointed by your lack of response to my personal and formal request of 5 May 2011 to meet with you to discuss my ongoing 5 year predicament at Crystal Lake Camp. I understand that Council have determined to make this issue "Confidential", I must question why ?? as Council is a rate payer funded entity. At this point of time my views have not been made public but they are certainly not confidential and I must question Council's confidentiality ruling and their demand that I must pay for their Confidential Legal advice of \$8,000+ ?? Every day that I spend here awaiting a resolution costs me a significant amount and hence saves Council an equal or greater amount. This situation has been ongoing for the past 5 years and has cost me and saved Council hundreds of thousands of dollars. Had Council terminated my expired Lease as of 30 June 2007 the cost to Council would have been well over \$500,000 and the loss to me has been similar. Please respond.

Warm Regards  
Robert  
Robert Carter  
Crystal Lake Camp  
Macclesfield 5153  
Ph 83889343

-----Original Message-----

From: robert [mailto:crystallakecamp@tpg.com.au]  
Sent: Thursday, 5 May 2011 7:23 PM

To: Ann Ferguson (aferguson@dcmtbarker.sa.gov.au)  
Subject: Emailing: Dear Phill Burton 5 May 2011

Dear Ann, after 5 years I am getting increasingly frustrated by Councils lack of consultation, lack of transparency and lack of understanding regarding the termination of my lease of Crystal Lake Camp. I therefore forward to you my response to Mr Phillip Burton and formally request a meeting with you to discuss this prolonged issue with the hope of a fair and reasonable resolution. I thank you for your consideration and your past interest in Crystal Lake Camp. The message is ready to be sent with the following file or link attachments:

Dear Phill Burton 5 May 2011

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

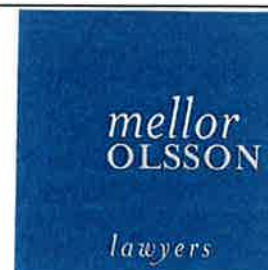
---

This email has been scanned by the MessageLabs Email Security System.  
For more information please visit <http://www.messagelabs.com/email>

---

CONFIDENTIAL

## Attachment 8 to Item 16.1



Our Ref: DP:JT:71673

Mr Phillip Burton  
 Manager Assets & Contracts  
 District Council of Mount Barker  
 6 Dutton Road  
 PO Box 54  
 MOUNT BARKER SA 5251

9 June 2011

Dear Phil

**RE: CRYSTAL LAKE CAMP – NEXT STEPS**

We refer to previous correspondence.

We have been asked to provide advice on a number of matters in order that Council is well-informed as it considers a further decision on the next steps to be taken in light of the rejection by Mr Carter of Council's offer of settlement.

The matters on which our advice is requested relating to the intention to evict Mr Carter from the site are as follows:

1. What is the process/steps that Council is embarking on?
2. What is our best estimate of timing relating to the above process?
3. What is the likely outcome and what are the key considerations of the Court?
4. What is our best estimate of costs to Council?

**1. The process/steps that Council is taking**

We have previously advised that Council can take Court action to evict Mr Carter from the site and require him to remove his buildings and improvements from the site.

In certain situations it is possible for a landlord to take physical action to "evict" a tenant who has not vacated premises. This typically occurs by giving seven-fourteen days' notice of an intention to remove the tenant. If a tenant does not vacate after this time then an attendance is necessary, at

Lawyers  
 PHILIP PAGE  
 CON TRAIANOS  
 GREG ARTHUR  
 PHIL McGOWEN  
 ANDREW GOODE  
 JAMES DEMPSTER  
 TOM MELLOR  
 KAREN OLSSON, Notary Public  
 PHIL DORMAN  
 JENNIFER GOODALE  
 ANTHONY KELLY  
 JOANNA ANDREW  
 DAVID PARRISH  
 LEONIE MILLARD  
 ELIZABETH OLSSON  
 MARIE TAYLOR  
 HELEN STRATFORD  
 JENNY TUMMEL  
 CARMEL HOMES  
 IAIN FAIRHOLM  
 SARAH VINALL  
 HANNAH MILLARD  
 ELI DAVIS-ROSS  
 ZEENA ANTHONY-QURESHI  
 JENNIFER FULLER  
 MIKNI HEBENSTREIT  
 Registered Conveyancers  
 JUDITH PHILLIPS  
 MARY PARR  
 MICHELLE COULTER

**My Direct Line  
 8414 3407**

Telephone  
 Australia (08) 8414 3400  
 Int. +618 8414 3400

Facsimile  
 Australia (08) 8414 3444  
 Int. +618 8414 3444



- 2 -

9 June 2011

which time locks are changed. In some instances, the assistance of police may be required. In this case this would not be appropriate, primarily as the buildings are owned by Mr Carter. This makes it impossible for the Council to simply change the locks, as it does not own the buildings.

Accordingly, we consider that the appropriate procedure would be for Council to issue Court proceedings by way of a summons for Mr Carter to give up possession of the land under Section 192 of the *Real Property Act* 1886. The Council, as "claimant", would be able to do so as a lessor where a legal notice to quit has been given and the term of the lease has expired.

Normally an action for possession would be taken by the registered proprietor of the freehold, but as the Crown is that owner then that provision is not appropriate.

Whilst Council has deliberated on whether or not the buildings and improvements should remain on the land, we consider it would be necessary for Council, in seeking an order for possession, to also seek an order that Mr Carter remove the buildings and improvements at his expense, giving him some time to make the necessary arrangements.

This is because it would be impracticable for Mr Carter to continue to own buildings on Council land. The expired lease provides that, if fixtures and fittings brought on the land by Mr Carter are not removed at the end of the lease, then they are deemed to be abandoned and become the property of Council. However, this provision does not deal with the majority of the buildings, which we understand were situated on the site and purchased by Mr Carter at the commencement of the lease from the former owner of the buildings.

Mr Carter continues to maintain that he is not responsible for the removal of the buildings. In our view, these buildings would constitute a trespass on Council's land and, therefore, it would be prudent for Council to seek an order for their removal.

The Court proceedings may be issued in either the District or Supreme Court and would be supported by a statement of claim and/or affidavit setting out the background to the relationship of the parties, the lease and the attempts by Council to reach an amicable settlement with Mr Carter (to the extent these settlement discussions have not been without prejudice or "off the record").

Mr Carter would be entitled to resist the Court proceedings and, if so, there would be a trial/hearing, typically after a number of preliminary conferences, and other procedural steps, including producing lists of the relevant documents and possibly setting out the parties' arguments in more detail.

After the trial/hearing, the Court would make an order either in the Council's favour or dismiss the Council's case.

We have noted that Council has also taken out rate and debt recovery proceedings against Mr Carter, but these proceedings have been adjourned pending resolution of the main issue of possession of the land. It would be appropriate for these debt recovery proceedings to be reactivated by Council to try to resolve all outstanding issues with Mr Carter. Mr Carter may seek to have these proceedings transferred so that they are consolidated and considered at the same time.

- 3 -

9 June 2011

We have previously mentioned the possibility of Mr Carter seeking injunctive relief to prevent Council seeking to evict him from the land. This was on the basis that we might have been taking proceedings in one of the inferior Courts, such as the Magistrates Court. If we proceed as suggested in the Supreme Court then this will not arise, as the Supreme Court has general jurisdiction over the proceedings and Council would need an order from that Court before any eviction took place.

## **2. Best estimate of timing**

We have previously advised that eviction proceedings may take several months. It is possible to seek an urgent hearing on the basis that Council requires possession of the land to undertake development or for its own use and this may be supported by the Court.

Once the proceedings are issued and served on Mr Carter there is a period of time, typically between 14 – 28 days in which he must decide whether to put in an appearance in order to resist the proceedings. In the case of proceedings pursuant to the Real Property Act, the Court may reduce the time and require attendance 16 days after the proceedings are issued.

From our experience, it is more typical that a preliminary hearing will be held approximately 6 weeks from the issuing of the proceedings with a trial being held anywhere from 2 – 3 months to 10 – 12 months later (depending on the urgency of the matter).

It is usually the case that a hearing in the Supreme Court can be arranged earlier than in the District Court, and we therefore recommend that the action be commenced in the Supreme Court. This would be heard before a single judge.

The fees and costs of both Courts are generally the same, so there is nothing to be gained by commencing the proceedings in the District Court.

We would anticipate a decision, if the proceedings are resisted by Mr Carter, within 1 to 6 months from the date of the trial/hearing (again depending on the urgency of the matter). The worst case scenario is that Council might not obtain a decision, and therefore an order for vacant possession, for a period of 18 months from when the proceedings are commenced.

## **3. Likely outcome and key considerations**

The likely outcome is that the Court will grant an order for possession of the land to Council and require Mr Carter to vacate the land within a certain period, say 14 – 28 days, to allow him time to remove his personal possessions.

If Council is successful with the proceedings for Mr Carter to remove the buildings from the land, this time may be extended by the Court.

Whilst the buildings are supposedly transportable we understand that some of the buildings will be difficult to remove and may need to be demolished. Mr Carter has consistently argued that removal of the buildings to another location is not viable and Council will need to acknowledge this possibility.

It will be necessary to impress upon the Court that the buildings cannot remain, even if they cannot be transported from the site, and should be demolished at Mr Carter's expense



- 4 -

9 June 2011

(although the Court may determine that upon vacation, as per the terms of the lease, the buildings become Council's problem). This is on the basis that their continued presence on the land will prejudice Council's future use of the land.

The issue of the value of the buildings will almost certainly be raised by Mr Carter and this issue will need to be resolved by the Court, in the absence of agreement between the parties. Council's argument is that the buildings have very little residual value and are not likely to be of any benefit to any future use of the site. The Court is likely to want to have some understanding of the value, if anything, of the buildings as this may influence what orders it makes. The Court will be mindful of not giving the Council a windfall even if the orders are made for vacating the site but the buildings remain. It will want to ensure that if they do have a value that Mr Carter is compensated (noting that there is unlikely to be any significant value in the buildings).

Matters that the Court will wish to consider include the following:

- The contractual position of the parties in the lease.
- The notice to terminate the lease/process.
- The dealings between the parties.
- The right of the lessor to possession of its land.
- The issue that on Local Government land a lessee can own buildings and in this case does so.
- If an order for possession is made and there has been some residential use, what arrangements are required for Mr Carter and his family (including the possible applicability of the Residential Tenancies Act, although this is unlikely).
- Whether Mr Carter owns any other properties – we understand that he owns 4 other such properties in South Australia (which may be relevant to any argument regarding the necessity for him to remain at Crystal Lake Camp).
- Whether it is appropriate to require the removal of the buildings, and the costs involved. The asbestos issue may well be raised.
- The amount of time required by Mr Carter to move from the land.
- What plans Council has to use the land in the future.
- Whether any of the buildings are transportable and if not is there some residual value that the parties should recognise.
- Public interest issues in relation to contractual obligations.

#### 4. Best estimate of costs to Council

We have previously advised that the action, if resisted, could cost in the order of "tens of thousands of dollars". This does not take into account the internal administrative costs incurred by Council staff in assisting Council's solicitors and, potentially, the need for attendance by Council staff to give evidence.

The external costs will include Court fees (in the order of \$1,800.00 for filing plus a daily trial fee of the same amount), legal costs incurred by Council's solicitors and the cost of any experts that may be required such as in relation to removal of the buildings.

It is extremely difficult to give an accurate estimate of the likely costs that Council will incur given the uncertainty as to whether Mr Carter challenges the orders sought by the Council. Based on our experience, we estimate the cost to be between \$8,000.00 and \$10,000.00 if it is not contested, and between \$20,000.00 to \$50,000.00 if a trial eventuates (inclusive of costs of counsel).

If Council is successful in obtaining the requested orders it is likely that the Court will order Mr Carter to pay a portion of Council's legal and other costs. As to the way in which the Court scale allows costs to be recovered, Council is likely to only recover about 50% - 70% of its actual costs.

If the action is dismissed then Council will bear its own costs and potentially have to pay a portion of Mr Carter's costs, which would be presumably of a similar amount to those incurred by Council. We consider that this eventuality is highly unlikely, but must be considered.

There is also the possibility of an appeal by either party against the Court decision, which would result in further costs being incurred. An appeal would be from the single judge's decision to the Full Court of the Supreme Court (3 judges). An appeal would typically cost between \$10,000.00 and \$20,000.00, but if it eventuates we would endeavour to give a more accurate estimate.

At this stage we do not consider it necessary to instruct counsel (a junior or senior barrister). Whilst ordinarily we would recommend instructing a barrister in the initial stages for a matter of this nature, as there is a possibility this may not be contentious or opposed, the instructing of a barrister may be premature. However, if it does become contentious, given the nature and potential complexities of the issues involved, we recommend at that stage instructing counsel. We are, of course, happy to proceed without instructing counsel if Council so desires, or, alternatively, instructing counsel sooner or later than suggested. We can discuss this further with Council officers as necessary.

#### Summary of Advice

We consider that commencing proceedings in the Supreme Court for an order for possession will be the most appropriate procedure. We anticipate that Council will be successful with its application. The removal of the buildings is less certain.

- 6 -

9 June 2011

It is difficult to be definitive on the costs and timing, but we have given our best estimates from our experience and knowledge of the issues involved.

I have been assisted in the preparation of this advice by Anthony Kelly, one of our litigation partners.

If you have any queries or require further advice, please do not hesitate to contact me again.

Yours sincerely  
MELLOR OLSSON

Per : *David Parrish*

DAVID PARRISH  
Direct e-mail: [dparrish@mellorolsson.com.au](mailto:dparrish@mellorolsson.com.au)

CONFIDENTIAL

